

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter the "Agreement") is entered into this 29th day of August, 2017 ("Effective Date") by and between the Plaintiff, Danuiel Hamilton ("Hamilton"), and Defendant the Town of Chapel Hill (the "Town"). Hamilton and the Town are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Hamilton alleged that he suffered personal injuries arising out of a motor vehicle incident on December 13, 2013 allegedly related to a manhole cover in the crosswalk of Raleigh Street adjacent to the intersection with East Franklin Street in Chapel Hill, North Carolina (the "Incident"); and

WHEREAS, Hamilton filed a Complaint in Superior Court, Orange County styled *Danuiel Hamilton v. Duke Energy Carolinas, LLC and Town of Chapel Hill*, 16 CVS 1453 (the "Lawsuit"); and

WHEREAS, the Town and Duke Energy Carolinas, LLC ("DEC") deny any wrongdoing; and

WHEREAS, the Parties desire to settle any and all disputes between them and/or DEC that were alleged or could have been alleged in the Lawsuit and/or are related to the Incident.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing promises, covenants, representations, and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Settlement Payment**: The Town agrees to pay Hamilton the total amount of \$1,500.00 (the "Settlement Payment"). The Settlement Payment will be made within 30 days of execution of this Agreement, provided DEC has executed a substantially similar agreement as described in Paragraph 5 herein. The payment will be made by check payable to Glenn, Mills, Fisher & Mahoney, P.A. and mailed to Carlos Mahoney, Measurement Building, 404 Hunt Street, Suite 100, Durham, NC 27701.

2. **Dismissal of the Lawsuit**: Hamilton agrees that it will cause the Lawsuit to be dismissed with prejudice within seven (7) business days of receipt of the Settlement Payment by his attorney. Each side will bear their own respective fees and costs associated with the Lawsuit. The Town agrees to dismiss its crossclaim against DEC with prejudice. The agreement between Hamilton and DEC will procure dismissal of the crossclaim filed by DEC. Hamilton, the Town, and DEC will execute a joint stipulation of dismissal dismissing all claims with prejudice.

3. **Release**: In consideration of the promises and covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties, including any party claiming by or through any of the Parties, shall release each other and their respective heirs,

successors, assigns, affiliate companies, agents, shareholders, partners, officers, directors, sureties, insurers, attorneys and employees from any and all claims, demands, actions, causes of action, liabilities, losses, damages or suits of any kind or nature, whether known or unknown, absolute or contingent, or which was or which could have been asserted in the Lawsuit and/or related to the Incident. This Release shall extend to DEC, its heirs, successors, assigns, affiliate companies, agents, shareholders, partners, officers, directors, sureties, insurers, attorneys and employees, as if DEC were a Party. This Release shall become effective upon receipt of the Settlement Payment pursuant to the terms of this Agreement. Notwithstanding the foregoing, nothing herein shall release a Party from its obligations under this Agreement.

4. **Liability:** Neither the making nor the performance of this Agreement is intended or is to be construed as an admission of liability by the Town. Such liability is expressly denied.

5. **Separate Agreement:** It is expressly understood that Hamilton and DEC will enter into a substantially similar agreement with a substantially similar release. The release in that agreement will be similar to the Release contained herein and will procure the release and dismissal of all claims by DEC against the Town related to the Lawsuit or the Incident, as described herein. This Agreement shall be void *ab initio* to the extent such an agreement is not executed and releases obtained.

6. **Entire Agreement:** Except as stated herein, this Agreement contains the sole, complete and entire agreement and understanding of the Parties and may not be altered, modified or changed in any manner except by writing duly executed by the Parties hereto. All prior and contemporaneous discussions and negotiations have been and are merged into and superseded by this Agreement.

7. **Costs:** Each party shall be responsible for its own attorneys' fees and costs incurred in connection with the Lawsuit and this Agreement. The Town agrees that DEC is not responsible for any of its attorneys' fees and costs incurred in connection with the Lawsuit and this Agreement. The agreement between Hamilton and DEC will contain a provision agreeing that the Town is not responsible for any of DEC's attorneys' fees and costs.

8. **Payment of Liens and Indemnification:** Hamilton hereby represents and warrants that he will satisfy all claims and liens, including but not limited to Medicare, North Carolina Medicaid, Tricare, and/or insurance liens, if any, that can be asserted against the proceeds of this settlement. Hamilton further represents, warrants, and agrees that if any lien or claim is asserted, he will satisfy such lien or claim and will indemnify, hold harmless and defend the Town from any such lien or claim.

Hamilton, in consideration of the settlement payment set forth below, promise promptly to defend, indemnify, and hold harmless the Town against any and all causes of action, claims, liens, demands, liability, actions, rights, damages costs, charges, losses, expenses, and attorneys' fees arising directly or indirectly from the Incident referenced above, if any, relating to the recovery of any one or more of following:

- a. Social welfare benefits paid or hereafter paid from any source to or in behalf of Hamilton.

b. Medicare, Medicaid, Tricare, and Medical insurance benefits paid or hereafter paid to or in behalf of Hamilton.

c. Hospital insurance benefits paid or hereafter paid to or in behalf of Hamilton.

d. Medical or hospital services rendered or hereafter rendered to or on behalf of Hamilton.

e. Disability or any other insurance benefits paid or hereafter paid to or on behalf of Hamilton.

9. **Governing Law:** This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

10. **Other Provisions:**

a. Each of the Parties represents and warrants that (i) the person signing this Agreement has full authority and representative capacity to execute this Agreement on behalf of themselves and all other persons, corporations, or entities for whom they purport to act as stated herein, and (ii) this Agreement has been duly executed and constitutes the valid and binding obligation of the Party signing such Agreement.

b. This Agreement shall be binding upon and shall inure to the benefit of the Parties' successors and assigns.

c. If any provision of this Agreement is subsequently held to be illegal, invalid or unenforceable, such provision shall be fully severable. If a provision cannot be fully severed, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as is possible while making that provision otherwise legal, valid and enforceable.

d. Each of the Parties represents and warrants that they have read this Agreement, that they have conferred with or had an opportunity to confer with their attorneys concerning this Agreement and the terms and conditions hereof, and that they fully understand the terms, conditions, requirements, and effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal with the intent that this Agreement is and shall have the effect of a binding agreement under law as of the Effective Date. This Agreement may be signed in counterparts and copied signatures or facsimile signatures shall be treated as originals.

(Signature Pages to Follow)

The Town of Chapel Hill

Ralph D. Karpinos (SEAL)

By: Ralph D Karpinos

Position: Town Attorney

Danuiel Hamilton

Danuiel Hamilton (SEAL)